

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHANCE SIMS,

Plaintiff,

v.

LAKESIDE SCHOOL,

Defendant.

CASE NO. C06-1412RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT ON AFFIRMATIVE
DEFENSES

This matter comes before the Court on "Plaintiff's Motion for Summary Judgment on Affirmative Defenses." (Dkt. #304). Plaintiff moves for summary judgment on five of the twelve affirmative defenses Defendant asserted in its supplemental answer on the grounds that Defendant has failed to provide any evidence in support thereof. Defendant responds that it does not intend to avail itself of the affirmative defenses that are the subject of Plaintiff's motion.

Having reviewed Plaintiff's motion, Defendant's response, Plaintiff's reply, and the remainder of the record, the Court hereby finds and ORDERS:

(1) "Plaintiff's Motion for Summary Judgment on Affirmative Defenses" (Dkt. #304) is GRANTED. The following five affirmative defenses asserted by Defendant are the subject of Plaintiff's summary judgment motion:

2. Certain of the Plaintiffs' claims may be barred in whole or in part by the relevant statute of limitations and equitable doctrines of laches, waiver, estoppel and unclean hands.
3. Plaintiffs' claims may be barred, in whole or in part, by the Washington Industrial Insurance Act.

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2 4. Plaintiffs' damages, if any, were caused by persons not under control of the Defendants.

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4 8. The entitlement to any relief which otherwise may be due in this case to Plaintiffs may be limited by the after-acquired evidence doctrine.

5 9. . . . Plaintiffs unreasonably failed to take advantage of any preventative or
6 corrective opportunities provided by Lakeside or to otherwise avoid harm.

7 (Dkt. #9 at 9-10).

8 Plaintiff indicates that Defendant has failed to provide any evidence with respect to these
9 affirmative defenses. In its response, Defendant explains that no evidence has been provided
10 because there have been "[s]everal significant developments [that] have dramatically changed the
11 landscape of the case" since Defendant filed its supplemental answer. (Dkt. #317 at 1).
12 Consequently, Defendant indicates that "[a]s a result of the altered landscape of this case, and
13 subject to any future attempts by plaintiff to resurrect or redefine his claim, Lakeside *does not*
14 *intend to avail itself of the properly asserted affirmative defenses that are the subject of*
15 *Plaintiff's Motion[.]*" (Dkt. #317 at 1-2) (emphasis added). Defendant has therefore effectively
16 chosen not to oppose Plaintiff's motion.

17 (2) The Clerk is directed to forward a copy of this Order to all counsel of record.

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19 DATED this 16th day of July, 2008.

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22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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